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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ALEX DANIEL TARABOCHIA, et al.,

12 Plaintiffs,

13 v.

14 F.B.I. Special Agent MICKEY ADKINS,
15 et al.,

16 Defendants.

CASE NO. C10-5197BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

17 This matter comes before the Court on Defendants Mike Cenci, Dan Chadwick,
18 Brett Hopkins and Brad Rhoden's ("Defendants") motion for summary judgment (Dkt.
19 50). The Court has considered the pleadings filed in support of and in opposition to the
20 motion and the remainder of the file and hereby grants in part and denies in part the
21 motion for the reasons stated herein.

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23 **I. PROCEDURAL HISTORY**

24 On June 1, 2010, Plaintiffs Alex Daniel Tarabochia, Bryan Anthony Tarabochia,
25 Joseph Burton Tarabochia, and Matthew Alexander Tarabochia filed a complaint against
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1 Defendants Mickey Adkins¹, Mike Cenci, Dan Chadwick, Brett Hopkins and Brad
2 Rhoden. Dkt. 7 (“Complaint”). Plaintiffs allege violations of their rights under the
3 Fourth, Sixth, and Fourteenth Amendments to the Constitution. *Id.*

4 On May 20, 2011, Defendants Mike Cenci, Dan Chadwick, Brett Hopkins and
5 Brad Rhoden (hereafter “Defendants”) filed a motion for summary judgment. Dkt. 50.
6 On July 14, 2011, Plaintiffs responded. Dkt. 66. On July 19, 2011, Defendants replied.
7 Dkt. 69.

8 **II. FACTUAL BACKGROUND**

9 Joseph Tarabochia (“Joseph”) claims that he has been a commercial fisherman his
10 entire life and that he has a long history of interactions with Washington State Fish and
11 Wildlife (“WSFW”) officers. Dkt. 67, Declaration of Joseph Tarabochia (“Tarabochia
12 Decl.”) at 1. Joseph asserts that approximately 11 years ago, Defendant WSFW Officer
13 Cenci “began a personal vendetta against [Joseph] and his family.” *Id.* at 2. Joseph
14 recounts a number of incidents to support his accusation, *Id.* at 2-6, and alleges that these
15 previous incidents directly led to the encounter at issue, which is described below.
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17 On March 23, 2007, Defendants were working as WSFW officers near Cathlamet
18 and Skamokawa, Washington along the lower Columbia River. Dkt. 52, Declaration of
19 Dan Chadwick (“Chadwick Decl.”), ¶ 6. Defendants were conducting field inspections,
20 checking commercial gillnet fishermen who were transporting fish, to ensure they had
21 properly filled out transportation or wholesale fish tickets and to ensure that they were not
22 in possession of any prohibited species such as wild Chinook salmon, steelhead or
23 undersize/oversize sturgeon. *Id.* Officer Cenci, Deputy Chief of Enforcement
24 Operations, claims that the field inspection program is an important part of the WSFW’s
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27 ¹ On October 6, 2010, Plaintiffs informed the Court that they did not serve Agent Adkins
28 and that they would not be pursuing their claims against Agent Adkins. Dkt. 17 at 1-2.

1 efforts to maintain the fisheries for the use and enjoyment of all the citizens in the state.

2 Dkt. 51, Declaration of Mike Cenci (“Cenci Decl.”), ¶ 4.

3 Between 6:00 a.m. and 7:45 a.m., Officer Cenci was located on a hill overlooking
4 the Skamokawa Bridge. *Id.* ¶ 9. From there he observed three fishing vessels unloading
5 fish in an area that is commonly known for that activity as well as for fish selling and
6 purchasing. *Id.* Officer Cenci recognized plaintiff Matthew Tarabochia (“Matthew”)
7 when he backed up a pickup to a fishing vessel. *Id.* ¶ 10. Officer Cenci observed some
8 activity with a fish tote in the back of the pickup. *Id.*

9 At about 7:20 a.m., Officer Cenci called Officer Chadwick who was located a
10 short distance away and told him that salmon had been loaded into a black 2004 Chevy
11 pickup. *Id.* ¶ 12. Officer Chadwick parked his vehicle a short distance away and waited
12 for the 2004 Chevy pickup to drive by. Chadwick Decl., ¶ 8. At 7:48 a.m., the pickup
13 passed Officer Chadwick, who pulled out from his parking spot and proceeded to follow
14 the truck. *Id.* ¶ 9. Officer Chadwick eventually pulled up behind the pickup, activating
15 his emergency lights, which included red and blue lights along with corner strobe lights
16 and wigwag headlights. *Id.* The pickup did not stop. *Id.*

17 Officer Cenci joined the pursuit of the pickup. He drove his vehicle around
18 Officer Chadwick’s vehicle and the pickup. Cenci Decl., ¶ 14. The officers were
19 eventually able to slow and stop the pickup. *Id.*

20 The officers approached the pickup and ordered Plaintiffs to exit the vehicle. *Id.*
21 ¶¶ 14, 15. Officer Cenci claims that he repeatedly gave the driver of the pickup,
22 Matthew, loud, clear commands to unlock the pickup and exit the vehicle. *Id.* ¶ 15.
23 Despite those requests, Matthew refused to unlock or exit the pickup. *Id.*

24 After a few minutes, Wahkiakum County Sheriff deputies arrived on the scene as
25 well as WSWF Officers Hopkins and Rhoden. *Id.* ¶ 16. Matthew eventually opened his
26 door and Officer Cenci took him into custody. *Id.* The passenger in the front seat,
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1 Joseph, opened his door and Officer Rhoden took him into custody. Dkt. 53, Declaration
2 Brad Rhoden, ¶ 10. Both Matthew and Joseph were transported to the Wahkiakum
3 County Jail and charged with avoiding a field inspection, obstruction of justice and
4 resisting arrest. *Id.* ¶ 13. The charges were dismissed by the Superior Court of the State
5 of Washington because the stop violated certain state statutes governing the authority of
6 WSWF officers. Dkt. 54 at 4-9.

7 **III. DISCUSSION**

8 Defendants have moved for summary judgment based on the doctrine of qualified
9 immunity. Plaintiffs respond that the “actions of the defendants in this situation, rather
10 than being an innocent mistake as to Washington law, was a premeditated, preplanned,
11 and malicious harassment by the defendants.” Dkt. 66 at 1. The Court finds that (1)
12 Defendants are entitled to qualified immunity on Plaintiffs’ Fourth Amendment claim; (2)
13 Defendants have failed to address Plaintiffs’ Fourteenth Amendment claim; and (3)
14 Defendants’ are entitled to summary judgment on Plaintiffs’ Sixth Amendment claim.
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16 **A. Summary Judgment Standard**

17 Summary judgment is proper only if the pleadings, the discovery and disclosure
18 materials on file, and any affidavits show that there is no genuine issue as to any material
19 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
20 The moving party is entitled to judgment as a matter of law when the nonmoving party
21 fails to make a sufficient showing on an essential element of a claim in the case on which
22 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
23 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
24 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
25 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
26 present specific, significant probative evidence, not simply “some metaphysical doubt”).
27 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
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1 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
2 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
3 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
4 626, 630 (9th Cir. 1987).

5 The determination of the existence of a material fact is often a close question. The
6 Court must consider the substantive evidentiary burden that the nonmoving party must
7 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
8 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
9 issues of controversy in favor of the nonmoving party only when the facts specifically
10 attested by that party contradict facts specifically attested by the moving party. The
11 nonmoving party may not merely state that it will discredit the moving party’s evidence at
12 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*
13 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
14 nonspecific statements in affidavits are not sufficient, and missing facts will not be
15 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

17 **B. Qualified Immunity**

18 Government officials enjoy qualified immunity from civil damages unless their
19 conduct violates “clearly established statutory or constitutional rights of which a
20 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
21 Thus, if a constitutional violation occurred, government officials are entitled to qualified
22 immunity if they acted reasonably under the circumstances. *Millender v. County of Los*
23 *Angeles*, 564 F.3d 1143, 1148 (9th Cir. 2009). “Qualified immunity balances two
24 important interests – the need to hold public officials accountable when they exercise
25 power irresponsibly and the need to shield officials from harassment, distraction, and
26 liability when they perform their duties reasonably,” *Pearson v. Callahan*, 129 S. Ct. 808,
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1 815 (2009), and protects “all but the plainly incompetent or those who knowingly violate
2 the law,” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

3 In resolving a claim of qualified immunity, courts must determine whether, taken
4 in the light most favorable to a plaintiff, the defendant’s conduct violated a constitutional
5 right, and if so, whether the right was clearly established. *Saucier v. Katz*, 533 U.S. 194,
6 201 (2001). While often beneficial to address in that order, courts have discretion to
7 address the two-step inquiry in the order they deem most suitable under the
8 circumstances. *Pearson*, 129 S. Ct. at 818.

9 **C. Fourth Amendment**

10 The Fourth Amendment provides that the “right of the people to be secure in their
11 persons, houses, papers, and effects, against unreasonable searches and seizures, shall not
12 be violated, and no Warrants shall issue, but upon probable cause” U.S. Const.
13 amend. IV.

14 In this case, Plaintiffs claim that Defendants violated their right to be free from
15 unreasonable searches and seizures. Dkt. 7 at 7-8. Defendants contend that they are
16 entitled to qualified immunity. Dkt. 50 at 9-19. The Court finds that the most suitable
17 manner to address the qualified immunity inquiry is to consider the second step of the
18 analysis, whether the constitutional right was clearly established. This inquiry turns on
19 the “objective legal reasonableness of the action, assessed in light of the legal rules that
20 were clearly established at the time it was taken.” *Wilson v. Layne*, 526 U.S. 603, 614
21 (1999) (internal quotation marks omitted); see *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)
22 (“[Q]ualified immunity operates to ensure that before they are subjected to suit, officers
23 are on notice their conduct is unlawful” (internal quotation marks omitted)). Defendants
24 contend that they “are entitled to qualified immunity because their conduct did not violate
25 clearly established statutory or constitutional rights of which a reasonable person would
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1 have known.” Dkt. 50 at 18. The Court agrees that the law regarding warrantless stops
2 by WSWF officers was not clearly established.

3 In support of their motion, Defendants have submitted a recent opinion by the
4 Supreme Court of California, *People v. Maikhio*, 253 P.3d 247 (2011). The court stated
5 the facts as follows:

6 In the present case, a fish and game warden (hereafter game warden),
7 surveilling a public fishing pier from a distance with a spotting telescope,
8 observed defendant Bouhn Maikhio fishing with a handline from the pier
9 and catching either a lobster or fish that defendant placed in a small black
10 bag by his side. Although from his position the game warden could not
11 identify the item defendant had caught and placed in the bag, the warden
12 was aware that, although it was unlawful to do so, such handlines were
13 often utilized in that location to catch spiny lobsters, which were out of
14 season at that time. After the game warden saw defendant leave the pier
15 with the black bag, enter a car in the pier parking lot, and drive away, the
16 warden stopped defendant's car a few blocks from the pier, introduced
17 himself as a game warden, and asked defendant if he had any fish or
18 lobsters in his car. When defendant denied having any, the game warden
19 looked in the car, saw the black bag on the floor of the rear passenger area,
20 opened the bag and discovered a spiny lobster. Upon questioning, defendant
21 admitted taking the lobster and said he had been “stupid” to do so. The
22 game warden issued a citation to defendant and thereafter returned the
23 lobster to the ocean.

24 *Id.* at 249-250. The defendant moved to suppress the evidence obtained by the game
25 warden because the warden had engaged in an unconstitutional search and seizure. *Id.* at
26 250. The court “conclude[d] that the vehicle stop was constitutionally permissible.” *Id.*
27 at 257. With regard to the state of the law on this issue, the court stated that

28 [t]o date, the United States Supreme Court has not directly addressed the
question of the constitutional validity of a brief stop of an angler or hunter
by a game warden to demand the display of any fish or game in the angler's
or hunter's possession, either when the angler or hunter is on foot or is in a
vehicle.

Id. Although the California Supreme Court's holding is not binding on this Court, it is at
least persuasive authority as to the state of the federal law on this Fourth Amendment
issue.

1 With regard to cases that are binding on this Court, the Court is unaware of, and
2 neither party has cited, a case that established the law on this Fourth Amendment issue.
3 Plaintiffs argue that they have a “clear, historic and unequivocal right to be left alone
4 absent a showing of reasonable grounds for their arrest.” Dkt. 66 at 12. While the Fourth
5 Amendment protects citizens against unreasonable searches and seizures, there is an
6 absence of law that would have informed Officer Cenci or Officer Chadwick that they
7 violated a clearly established constitutional right by performing the vehicle stop and field
8 inspection. Therefore, Defendants are entitled to qualified immunity and the Court
9 dismisses Plaintiffs’ Fourth Amendment claim against Defendants.

10 **D. Sixth Amendment**

11 Plaintiffs claim that Defendants’ conduct has deprived them of their Sixth
12 Amendment right to be informed of the accusations against them. Dkt. 7 at 8-9.
13 Defendants argue that Plaintiffs “make no effort to specify how the particular right was
14 alleged to have been violated” Dkt. 50 at 19. The Court agrees. Therefore, the
15 Court grants Defendants’ motion for summary judgment on Plaintiffs’ Sixth Amendment
16 claim because Plaintiffs have failed to submit admissible facts in support of this claim.

17 **E. Fourteenth Amendment**

18 Plaintiffs claim that Defendants’ conduct has deprived them of their Fourteenth
19 Amendment due process and equal protection rights. Dkt. 7 at 8-9. Defendants contend
20 that these “claims must fail as a matter of law because the question of whether an
21 officer’s seizure of an individual is constitutional is analyzed exclusively under the
22 protections afforded to the plaintiffs under the Fourth Amendment.” Dkt. 50 at 20.
23 Plaintiffs, however, have alleged other conduct by Defendants unrelated to the stop on
24 March 23, 2007. *See* Complaint, ¶ 7; *see also*, Tarabochia Decl. at 2-7. Based on these
25 allegations, the Court finds that Plaintiffs have stated a claim for relief under the due
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1 process clause of the Fourteenth Amendment and that Defendants have failed to address
2 this claim.

3 Alleged abuses of power by executive officials may support a cognizable claim as
4 a violation of substantive due process. *See County of Sacramento v. Lewis*, 523 U.S. 833,
5 846 (1998). A Fourteenth Amendment claim of this type is cognizable if the alleged
6 abuse of power “shocks the conscience” and “violates the decencies of civilized conduct.”
7 *Id.* at 846 (internal quotations omitted). Government conduct is actionable if the conduct
8 is “intended to injure [the plaintiff] in some way unjustifiable by any government interest
9” *Id.* at 849.

10 In this case, the *pro se* Plaintiffs’ complaint should be construed liberally,
11 affording Plaintiffs the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police*
12 *Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). Plaintiffs’ complaint includes allegations of
13 government official conduct that may have been intended to injure Plaintiffs in some way
14 unjustifiable by any government interest. This claim appears to be supported by the facts
15 alleged in the declaration on file. Defendants have failed to address this claim.
16 Therefore, the Court denies Defendants’ motion for summary judgment on Plaintiffs’
17 Fourteenth Amendment claim.
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19 IV. ORDER

20 Therefore, it is hereby

21 **ORDERED** that Defendants’ motion for summary judgment (Dkt. 50) is
22 **GRANTED in part** and **DENIED in part** and Plaintiffs’ Fourth and Sixth Amendment
23 claims against Defendants are **DISMISSED**.

24 DATED this 9th day of August, 2011.

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27 BENJAMIN H. SETTLE
28 United States District Judge